

In The Matter Of:
United States vs.
PFC Bradley E. Manning

Vol. 27
August 2, 2013
UNOFFICIAL DRAFT - 8/2/13 Afternoon Session

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VOLUME XXVII

IN THE UNITED STATES ARMY

UNITED STATES

VS.

MANNING, Bradley E., Pfc.

COURT-MARTIAL

U.S. Army, xxx-xx-9504

Headquarters and Headquarters Company,

U.S. Army Garrison,

Joint Base Myer-Henderson Hall,

Fort Myer, VA 22211

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The Hearing in the above-titled matter was
continued on Friday, August 2, 2013, at 1:40 p.m., at
Fort Meade, Maryland, before the Honorable Colonel
Denise Lind, Judge.

DISCLAIMER

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1 APPEARANCES:

2
3 ON BEHALF OF GOVERNMENT:

4 MAJOR ASHDEN FEIN

5 CAPTAIN JOSEPH MORROW

6 CAPTAIN ANGEL OVERGAARD

7 CAPTAIN HUNTER WHYTE

8 CAPTAIN ALEXANDER van ELLEN

9
10 ON BEHALF OF ACCUSED:

11 DAVID COOMBS

12 CAPTAIN JOSHUA TOOMAN

13 MAJOR THOMAS HURLEY

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August 2nd, 2013

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1 PROCEEDINGS,

2 THE CLERK: All rise.

3 THE COURT: Please be seated. The court is
4 called to order. Major Fein, please account for the
5 parties.

6 MR. FEIN: Yes, ma'am. All parties in the
7 court in the last recess are again present with the
8 exception of Captain Overgaard is absent. Captain
9 Morrow is present.

10 THE COURT: Is there anything we need to
11 address before we proceed?

12 MR. TOOMAN: Ma'am, I believe it was
13 Captain [Inaudible] was here.

14 MR. FEIN: Yes, ma'am. Captain Overgaard
15 was not here, nor was Captain Morrow and Captain Morrow
16 is now present.

17 THE COURT: Thank you.

18 All right. Is there anything else we need
19 to address before we proceed?

20 MR. FEIN: No, ma'am.

21 MR. COOMBS: No, ma'am.

1 THE COURT: All right. Please call your
2 next witness.

3 MR. FEIN: The United States calls
4 Ambassador Michael Kozak. Could you please stand and
5 face me and raise your right hand?

6 (Witness complied.)

7 Whereupon,

8 MICHAEL KOZAK,
9 called as a witness, having been first duly sworn to tell the truth,
10 the whole truth, and nothing but the truth, was examined and testified
11 as follows:

12 EXAMINATION BY MR. FEIN:

13 Q Thank you, sir. Please be seated.

14 A (Witness complied.)

15 Q Sir, you are ambassador Michael Kozak with
16 the Department of State?

17 A Yes, sir.

18 Q And you're currently the acting assistant
19 secretary for the the Bureau of Democracy, Human Rights
20 and Labor?

21 A Correct.

1 Q Thank you, sir.

2 Sir, you're here today, at least your
3 understanding is, to discuss your expertise in the
4 field of the United States efforts to foster democracy
5 abroad and human rights concerns?

6 A Yes, sir.

7 Q Sir, given that expertise, are you prepared
8 today to eventually give an opinion on the impact of
9 PFC Manning's criminal conduct on individuals who are
10 at risk of death, risk of violence or incarceration
11 based on the purported Department of State cables?

12 A I am.

13 Q Thank you.

14 THE COURT: Before you go, the scope of
15 expertise is?

16 MR. FEIN: Yes, ma'am. United States'
17 efforts to foster democracy abroad and human rights
18 concerns.

19 THE COURT: Say it one more time.

20 MR. FEIN: Yes ma'am. United States'
21 efforts to foster democracy abroad and human rights

1 concerns.

2 THE COURT: Yes?

3 MR. TOOMAN: Ma'am, we have no doubt that
4 Ambassador Kozak is an expert in that area. However,
5 the Defense doesn't believe that expertise is required
6 for Ambassador Kozak to give the testimony we believe
7 he's going to give today. My understanding is fact
8 based, based his work on the persons at risk within the
9 Department of State. I don't believe that requires any
10 expertise.

11 THE COURT: Major Fein?

12 MR. FEIN: Yes, ma'am. Ambassador Kozak's
13 expertise is in two forms. One is to help the trier of
14 fact understand the interest [Inaudible] of the
15 Department of State and how we assist individuals and
16 how the department assisted individuals both in their
17 function and the capability of the department who were
18 put at risk and based off of his background and human
19 rights and promoting democracy abroad.

20 And second, Your Honor, the United States
21 does intend to elicit his opinion on what impact will

1 occur in the future to individuals that were or were
2 not identified at risk and that's based off of his
3 expertise.

4 THE COURT: What will or will not occur in
5 the future?

6 MR. FEIN: As far as risks to certain
7 individuals -- not certain individuals, but classes of
8 individuals, yes, ma'am. His opinion on what will
9 occur to those, for instance, that could not be
10 notified or those that were notified or those that had
11 yet to be identified and are coming to the Department
12 of State.

13 THE COURT: What risks remain outstanding?

14 MR. FEIN: His opinion on that, yes, ma'am.

15 THE COURT: All right. What I'm going to
16 said is what I would do earlier. I'm going to allow
17 the testimony and evaluate it in my interlocutory
18 capacity and decide whether this kind of testimony is
19 going to be admissible based on the issue we addressed.
20 Go ahead.

21 MR. FEIN: Yes, ma'am.

1 MR. TOOMAN: Ma'am, we wouldn't object to
2 his expertise. I guess we can skip the foundation of
3 his expertise to the extent it's not necessary for the
4 foundation. I guess the court understands that we have
5 the relevance objection. Obviously, we still have our
6 objection about future --

7 THE COURT: I understand. I know. Go
8 ahead.

9 MR. FEIN: Ma'am, the United States asks
10 for this be marked and moved to admit Master Kozak's
11 official resume from the Department of State.

12 THE COURT: Any objection to the resume?

13 MR. TOOMAN: No, ma'am.

14 THE COURT: Thank you. Prosecution
15 Exhibit 201 is admitted. Major Fein, proceed.

16 MR. FEIN: Yes, ma'am.

17 BY MR. FEIN:

18 Q Master Kozak, what I intend to do right now
19 is go through some key events in your career that led
20 for you ultimately being selected to head the WikiLeaks
21 persons at risk working group, but do this very briefly

1 versus the course of many pages that we had previously
2 discussed.

3 In your current capacity, sir, how long
4 have you been the acting principal deputy, assistant
5 secretary and the acting assistant secretary off and
6 on?

7 A I started actually in 2003 being principal
8 deputy in this bureau. I took a tour at the White
9 House, came back again and I've been in and out of it
10 for the last -- well, since last fall.

11 Q And how long, sir, have you at least been
12 working specifically on issues dealing with the United
13 States efforts to foster democracy abroad and human
14 rights?

15 A Our focus specifically on that started in
16 2003. In fact, my work before that also had a large
17 component of it. But all of my jobs since 2003 have
18 focused specifically on the democracy and human rights.

19 Q Sir, in your current position, what are
20 your general duties and responsibilities within the
21 bureau?

1 A Well, at the moment, it's to head the
2 bureau in the absence of my boss and when she said
3 there is to be the deputy, we supervise all range of
4 things from both policy to management. But a large
5 part of it is simply to -- we run programs out of
6 bureau. So we're doing assistance to human rights and
7 democracy activists around the world at the same time.

8 We're also monitoring what is going on in
9 different countries from a human rights perspective.
10 We attend inter-agency meetings, meetings within the
11 department to try to be sure that component of our
12 policy gets due hearing.

13 Q Sir, you mentioned for a stint you worked
14 at the White House.

15 Could you please explain briefly for the
16 court what you did that capacity?

17 A Yes. I was senior director for democracy,
18 human rights and international organizations from
19 2005 to 2009. So it's the counterpart in the White
20 House structure to the bureau I'm in plus a few other
21 bureaus. Again, it's the same kind of function, to be

1 in the president's activities that the human
2 rights/democracy component was brought to bear in
3 inter-agency meetings.

4 Q Sir, prior to joining full-time the
5 department, DRL, what was your job at the Department of
6 State?

7 A Well, immediately before DRL I was
8 ambassador to the Republic of Belarus. Prior to that,
9 I was head of our mission in Cuba and prior to that I
10 was special negotiator for Haiti and then acting
11 assistant, secretary and principal deputy in the Bureau
12 of the American Affairs for four years and then
13 principal deputy of the legal advisor's office before
14 that. So that's kind of the whole spectrum.

15 Q And how long, sir, have you been at the
16 Department of State?

17 A Since 1971.

18 Q And that has been continuous, sir?

19 A Yes.

20 Q And you are a -- you're a lawyer by trade
21 and training, correct?

1 A Correct.

2 Q When did you leave the legal community
3 full-time within the Department of State?

4 A 1988.

5 Q And again, very briefly, as an attorney,
6 legal advisor for the Department of State, what type of
7 responsibilities did you have that involved your
8 expertise for today?

9 A Well, I had the -- because I became
10 principal deputy, I have the entire range of activities
11 of the legal advisor's office. But a lot of the work
12 we did was, again, for protection of human rights,
13 refugee issues, the range of both U.S. laws and then
14 U.S. outreach with other organizations. For example,
15 the UN High Commission for Human Rights.

16 So I think you can look at that and see
17 some connection between that and the human rights
18 democracy expertise of today.

19 Q Sir, from -- I asked you from your time as
20 a full-time legal advisor. What about after your time
21 as a legal advisor?

1 How did -- what experience did you have for
2 human rights specifically from your time of Cuba and as
3 a U.S. ambassador?

4 A Well, both Cuba and Belarus have some
5 pretty serious democracy deficits and big human rights
6 problems. So my job there was to maintain contact
7 with -- not only with the government officials, but
8 also with human rights activists in those countries to
9 try to come up with ways of urging and persuading the
10 governments to open up their space for more society to
11 operate, to be more respectful of human rights and to
12 try to both work with and help protect activists that
13 would get in trouble because of their activities.

14 Q Sir, in that capacity as a U.S.
15 ambassador -- I'm sorry, sir. Is the title head
16 diplomat for it?

17 A No. Chief of mission in Cuba. It's what
18 ambassadors do too, but because we don't have formal
19 diplomat relations in Cuba, we don't call it an
20 ambassador there. It's the same function.

21 Q So as the ambassador to Belarus and chief

1 of mission for Cuba. What specific -- I'm sorry. What
2 experience do you have with individuals that were
3 potentially put in harm's way because of human rights
4 and other issues?

5 A I would do things, for example, go to their
6 trials. I've been in courtrooms before where there
7 wasn't a lot of due process. But by going to the
8 trial, observing it, it helped try to keep the
9 situation a little bit more honest than you would get
10 otherwise. So that was one of the things we did to
11 help activists in other countries.

12 We would organize with other diplomats when
13 they were having a demonstration or something to be
14 sure that we had people out there to observe it so if
15 somebody was going to come beat them up, that there
16 would be credible witnesses that could do that and by
17 doing so you tended to deter attacks on people and help
18 them exercise their rights.

19 And in some cases I can think of a couple
20 in Cuba where we actually had people who got in such
21 trouble that we helped them get out of the country

1 because they were at risk for being put away for the
2 long time or at risk of violence. They had an action
3 there called actos de repudio where they would get a
4 mob to come and find you in your house and beat you up.

5 Belarus, the dictator there, his way of
6 dealing with political opponents was to make them
7 disappear off the street. So, again, it was kind of
8 coming up with strategies, trying -- in that case, we
9 tried to help the widows of the people who had been
10 killed, but also to create deterrence for them
11 repeating that experience.

12 Q So for these individuals, sir, in these
13 examples, I mean, what is the relationship to the
14 United States? Or a better stated -- a better question
15 might be: Why was it that a U.S. ambassador chief of
16 mission or the diplomatic mission is assisting them?

17 A Simply because one of our pillars of U.S.
18 policy for quite a while now -- if you look back over
19 the three administrations, national security strategy
20 says promotion of democracy and human rights is an
21 essential component of our national security.

1 So it's been a longstanding effort of the
2 U.S. to try to help people who are standing up for
3 their own rights to do what we can, which is often not
4 very much, but we do what we can to try to protect them
5 from the degradations of their own repressive
6 governments.

7 Q Sir, have you ever testified before as an
8 expert in this field before Congress?

9 A Not on this topic. I've testified in my
10 capacity as an official of the Democracy and Human
11 Rights Bureau.

12 Q To stay on this topic, you mean as far as
13 the WikiLeaks person at risk working group?

14 A Right, I've testified on that.

15 Q So in reference to your general field of
16 promoting democracy and human rights?

17 A Oh, yes. That, many, many times.

18 Q Sir, how many times would you estimate of
19 actual testimony, not necessarily briefing of members?

20 A Yeah. I'm thinking probably a dozen over
21 the last, you know, ten years or so.

1 Q And then what about meetings with members
2 or staffers on the general subject?

3 A We -- when I was in this bureau before, I
4 used to go up once a month on the house side and meet
5 with staff and on the senate side once a quarter. That
6 may give you an idea of the tempo there. Quite a lot.
7 We still have quite a bit of contact. It's part of
8 job.

9 Q Yes, sir. Sorry, sir. One moment please.
10 (Pause.)

11 Sir, in your current and previous jobs,
12 have you ever had a requirement to negotiate with
13 foreign governments on behalf of the United States for
14 democracy or human rights issues?

15 A Yes.

16 Q And could you please briefly and generally
17 describe for the court some of those instances?

18 A Well, it's almost every foreign official I
19 see, which is probably several a week, we're either
20 talking about what we can do together to get another
21 government to be more compliant with its human rights

1 obligations or we're talking to the other government
2 and executing that and saying here is what you need to
3 be doing.

4 So it's been a -- I mean, oftentimes what
5 you're trying to do is get them to release a prisoner.
6 Sometimes you're trying to get them to adopt habeas
7 corpus law, for example, when what they don't already
8 have one.

9 In other cases, you're trying to get them
10 to set up procedures to comply with laws that they have
11 on their books but they routinely don't comply with.

12 So lot of it is basically trying to urge
13 them to build into their own processes protections, due
14 process protections for people on trial and to get rid
15 of political type crimes and stick with real ones.

16 Q Sir, have you ever chaired any type of
17 international counsels in this same field?

18 A Yes. I mean, I've been in Geneva just
19 recently, for example, where I was representing the
20 U.S. in an exercise that's ongoing where we're trying
21 to work with countries from the Organization of Islamic

1 Cooperation and then European countries and others to
2 drill down on what is it that you can do to promote
3 religious freedom, to diminish discrimination and so on
4 based on religion without affecting freedom of
5 expression. There has been a dichotomy before where
6 the way that certain countries saw the only way to
7 protect religion was to put all kinds of restrictions
8 on expression.

9 We've had a breakthrough two or three years
10 ago where we convinced countries that it was better to
11 work on other practical measures to try to suppress
12 discrimination and so on without affecting freedom of
13 speech. That's just one example of what I've been
14 doing over the last couple of years.

15 Q Sir, what I'd like to now do is focus about
16 your involvement with the WikiLeaks disclosures at
17 Department of State.

18 What was your position, sir, in late 2010?

19 A I was senior advisor in the Bureau of
20 Democracy, Human Rights and Labor.

21 Q And as a senior advisor, what were general

1 duties or responsibilities?

2 A To do whatever the assistant secretary
3 wanted me to do and, at the time, actually, I was very
4 tied up. I just mentioned this topic of dealing with
5 religious discrimination without affecting freedom of
6 speech. I've been very involved in that.

7 I had also been out in Afghanistan that
8 year looking at both U.S. and Afghan detention centers
9 to try to set up monitoring mechanisms to be sure that
10 when we turn prisoners over and so on they were getting
11 humane treatments. So that was an example of a couple
12 of things I had done that year.

13 Q Yes, sir. And, sir, are you familiar with
14 the purported cables released by WikiLeaks?

15 A Yes, I am.

16 Q And how did you become familiar?

17 A Well, in 2010, soon after the disclosure
18 that WikiLeaks was going to be disclosing these
19 purported cables, there was a working group or an
20 operation center formed a task force in the operation
21 center which is what they do when there is a crisis of

1 some kind and it tends to bring representatives of the
2 different bureaus within the State Department together
3 so that you're sitting in one place and you can rapidly
4 exchange information.

5 Our bureau was asked to volunteer and have
6 somebody on watch for that all along. I did it myself
7 on a couple of occasions. So that was how I initially
8 got involved in it.

9 Q So, sir, once you were initially involved
10 in the weeks after the purported cables started being
11 released, in reference just really to persons at risk,
12 what was the focus of the working group at that point?

13 A Well, how this evolved was initially the
14 working group -- the initial thought for everybody is,
15 oh, my gosh, our relationships with all kinds of
16 governments around the world are going to be
17 embarrassed by the uncandid comments about what you
18 thought of the foreign minister and so on.

19 So that was the immediate focus. But it
20 was not very long into it that as people started to
21 look at these cables that were purported to be

1 department cables, we said it's not just the person
2 that was being talked about, but the person doing the
3 talking. In many cases it was from -- either by name
4 or by the context of the cable we could tell who the
5 source was.

6 So the concern was, okay, in countries
7 where they react badly to things like this in ways that
8 we would not, what is going to happen to these people?

9 So I was asked, at that point, to put a
10 special focus on it. This was still within the context
11 of the overall task force that had been set up and then
12 somewhere around Christmastime, I would say, they
13 decided to create us as a separate parallel group. So
14 we were in a different task force room, still had
15 conductivity with the bigger task force, but it was to
16 focus specifically on what do we do about this problem
17 of people who could be at risk because of the fact that
18 they had talked to us and maybe said some things or it
19 could be inferred that they said some things that would
20 be bad for them.

21 So I was -- I did that initially as part of

1 that task force and then I was asked to head up a
2 specific group for this still under the executive
3 secretary of the department that would look at this
4 issue from both a policy and a operational perspective.

5 We ended up with deputy assistant secretary
6 level people from each of the regional bureaus in the
7 State Department. There are six regional bureaus that
8 correspond to the different chunks of the world and
9 people from our functional bureaus, legal advisors
10 office and so on that might have relevant expertise and
11 the first step was to try to figure out how do we know
12 how many people are at risk, how do we assess what the
13 potential damage is here and we said, okay, there's no
14 way anyone can look at a quarter of a million cases in
15 a reasonable amount of time or even an unreasonable
16 amount of time.

17 So we split it up and said each post who
18 originated cables, whether it was an embassy, a
19 consulate or the State Department itself would go back
20 and look through the cables it had generated during the
21 relevant timeframe, determine whether there were

1 people, identifiable people there where the disclosure
2 of the purported cable could result in -- the criteria
3 we came up with was death, violence or incarceration.
4 In other words, political embarrassment, losing your
5 job, we didn't take that under our wing. It was people
6 where it was a much more extreme reaction that could be
7 anticipated.

8 So what we asked was all the posts to go
9 through those cables, identify where were there those
10 kind of cases. The decision was up to the chief
11 admission to the ambassador in each of those cases to
12 determine, based on local circumstances, the likelihood
13 of something bad happening and then they were tasked
14 with, when it was safe to do so, reaching out to the
15 individuals, letting them know that there was a
16 potential problem here and then eventually, if the
17 people looked like they needed and wanted help, to
18 formulate an assistance plan to try to mitigate the
19 risk or the damage to them and then we oversaw the
20 implementation of that as well as the group did. So
21 that was really the whole span of activity.

1 Q Thank you, sir.

2 Sir, you said a few things in there that I
3 feel like I could clarify for the court. You said
4 Christmastime that year.

5 Was that 2010?

6 A Correct.

7 Q You also said, at the very beginning, that
8 the information originally was thought that it could be
9 embarrassing.

10 What did you mean by that, sir, politically
11 embarrassing?

12 A For example, if you had a purported cable
13 that said ambassador or maybe one of the officials in
14 the State Department had said that I think that my
15 counter part in this other government is a jerk and
16 really isn't a very deep thinker and, you know, doesn't
17 have much influence. It could be anything that you
18 might -- it might be a candid comment that you're
19 making so that your colleagues understand this is an
20 important person or not an important person or a
21 trustworthy or not a trustworthy. But when it comes

1 out in public, it's going to be embarrassing because
2 that's somebody you need to work with every day. That
3 was the original focus, I would say -- at least my
4 perception of the leadership of the department was that
5 that was what they were initially looking for. But as
6 I said, as we started to look for where is the exposure
7 on that front, it immediately became it's not just the
8 people we're talking about, it's the people that we're
9 talking to. The one puts at risk of the embarrassment.
10 The other puts it somebody else at risk of violence and
11 that was the part that I got handed.

12 Q And, sir, what was your role when you were
13 handed that? I mean, what was your role of the persons
14 at risk working group?

15 A I was the chair of the group. So, as I
16 said, I chaired it. I was under the direction of
17 the -- at that point, of the executive secretary of the
18 State Department who is the -- one of chief aides
19 directly to the secretary and then had these deputy
20 assistant secretaries from each of the regional bureaus
21 involved.

1 Q Sir, at any point after -- you're now
2 talking about the initial establishment in December?

3 A Correct.

4 Q At any point, did more people have to
5 become involved at the Department of State for this
6 mission?

7 A Yes. On two counts. One -- and I can't
8 remember quite when, but I think it was in the early
9 part of 2011 they disestablished the task force, but
10 they continued to have the group -- the same group, the
11 same people but put it under my parent bureau, the
12 democracy and human rights bureau.

13 So the difference was, instead of reporting
14 to the secretary through the executive secretary, I was
15 reporting through the DRL assistant secretary, but the
16 same function, same individuals involved.

17 But the other thing, by that point we were
18 really starting to identify and it took awhile to go
19 through. Some posts had thousands of cables and they
20 had to analyze each one of them. But as they started
21 to come up with cases, then we really felt we couldn't

1 try to rely on the desk officers for each country.
2 Most of them had not been steeped in this and you were
3 reinventing the wheel all the time.

4 So we basically took people, working level
5 people, from our bureau and then from each of the other
6 bureaus in the department and created a working level
7 group as well as the senior level group that I was
8 chairing so that they could -- once we had given
9 guidance, they could put together the necessary cables,
10 instructions, memos seeking approval to provide
11 assistance and so on. So it engaged quite a few more
12 people.

13 Q Sir, how did the review -- how was the
14 mission accomplished or at the time accomplished
15 without extra personnel being brought in?

16 A Well, we basically detached people from
17 their normal duties and put it them into these duties.
18 When you think of the -- like the deputy assistant
19 secretaries, in most bureaus there are three to five
20 deputy assistant secretaries. They are the senior
21 leadership of that bureau and you're making each one of

1 them spend a significant amount of their time on this
2 issue.

3 It also involved others. We did it that
4 way because that person would have sufficient sort of
5 command presence in their own bureau that they could
6 get others to do things. So we didn't want to have to
7 deal with 27 different people in the near east bureau,
8 for example.

9 So we had one person who was there, but
10 then she would draw on the country desks, desk
11 officers, their regional policy, planning staffs,
12 whoever was needed and bring them into it.

13 So the people that were devoted full time
14 are the ones that we made the points of contact. But
15 there were a lot of other people who are spending
16 significant amounts of time on this.

17 Q Sir, from your experience, why was this
18 such a high priority to divert resources to
19 accomplishing that mission?

20 A I think it was because -- certainly the
21 feeling of everybody on the groups I was on and it was

1 because it reflected the feelings of Secretary Clinton
2 at the time and the other senior leadership of the
3 department was that we had a moral obligation. If you
4 talked to people, you get information from them and
5 it's done in a context where they expected that's going
6 to be kept confidential and it isn't and they're put in
7 danger by it. Not only do you have a strong moral
8 feeling that you should do everything you can to
9 mitigate the damage, but the other part of it is the
10 credibility of the United States as well. You know,
11 it's a little bit -- you're in the same position as a
12 newspaper reporter. If you go out and reveal all your
13 sources every time, not too many people will talk to
14 you the next time. So there was both that practical
15 side but I think, overwhelmingly, it was the moral --
16 sense of the moral obligation that was driving this.

17 Q Sir, what was the ultimate end state of
18 identifying someone at risk by the working group?

19 A Well, the end state was to be sure, A, that
20 they've been identified; B, that wherever feasible
21 without further increasing the danger to them that we

1 would notify them so that it wouldn't come as a
2 surprise to them that they were identifiable in a
3 purported cable that we assumed would come out.

4 And then, third, was if they expressed a
5 desire, we also authorized our post to say we would
6 be -- you know, we would do what we could to mitigate
7 the risk. If somebody said I really need some help
8 here, I can't stay in the same town with people knowing
9 that I said this or else, you know, this gang come kill
10 me or the government will come kill me or they will put
11 me in jail, then we put together a plan to try to help
12 them out.

13 Each one of these had to be individualized
14 to the circumstances of the person because no two
15 people were alike. We had some tools that we could
16 use, but we really left it to our post with us then
17 doing a more of an approving role and an enabling role
18 to make it happen once they come up with a viable plan
19 for helping the person where we could get to them.

20 Q Sir, I should have said this at the very
21 beginning. But, as you know, if any question from any

1 of the parties or court elicits or requires a
2 classified answer, please notify the court. There's no
3 expectation you say that in open session.

4 A Thank you.

5 Q So, sir, what type of the identifying
6 information about these -- generally, these individuals
7 was included in the purported cables that made the
8 posts and the working group concerned?

9 A Well, in many cases the name of the person
10 or their position would be there. Even when that
11 wasn't there, oftentimes, you know, if there were
12 enough descriptors about the person that a reader could
13 figure out who it was, that was of concern too because
14 it was anything that would lead someone to be able to
15 get back and say the person who said something
16 unflattering about the local government or even in some
17 cases just the fact that you were talking to Americans,
18 whether -- you might even have been saying something
19 nice about the local government, but that someone could
20 decide that speaking to an American was a heinous
21 enough offense that they would go after you. So that

1 was where the judgment calls were called for.

2 As I said, we largely left those to the
3 people in the field because they were the ones who were
4 closest to it and had the best sense of how -- whether
5 it was a state actor or a non-state actor who was
6 likely to react to the information that was in the
7 cable, whether it was simply the fact you were talking
8 to an American official or something that you had said
9 to them and then you could be identified. Those were
10 the pieces of the puzzle they were putting together.

11 Q Sir, those pieces of the puzzle you are
12 talking about, is that type of information that is
13 normally transmitted via unclassified systems in the
14 Department of State?

15 A No. When -- one of the things that we
16 normally do is when we're talking to people abroad
17 and -- what you're doing is you're trying to build a
18 picture for people back home. Sometimes you're
19 communicating a message. I went in -- you know, I was
20 told to go in and see the foreign minister and tell him
21 that we were really concerned about the fact that they

1 didn't have habeas corpus law or something. I can
2 report that back and say I did that.

3 That, you might not classify because -- but
4 if you have in that cable, you know, he told me
5 confidentially that he really didn't have any influence
6 with the president anymore or something, then you'd
7 classify the cable. But in most cases what you're
8 doing is you're talking to people and getting different
9 bits of information that you can use to put together a
10 mosaic of what's going on in that country, what's the
11 dynamic and so on and you're putting the information
12 about the identity of who you're talking to in there so
13 that the people at the other end can assess its
14 credibility, how likely is this person to know or not
15 know the information they're talking about. But the
16 person you're talking to is doing so on the assumption
17 that you're not going to be broadcasting the fact that
18 you talked to them and what they had to say all over
19 the face of the earth.

20 So that's the reason that you would
21 classify it. It's the expectation that the information

1 or the fact that the contact would be kept in
2 confidence that would cause you to classify the cable.

3 Q Sir, when the working group was assessing
4 the risk -- you briefly spoke about this but if you'd
5 provide more detail, what were the different levels of
6 risk that the working group was operating on?

7 A Well, we tried to make it basically a
8 single trigger, that if it was violence or
9 incarceration or something similarly grave, that they
10 were at risk. If it was political embarrassment, loss
11 of job, being shunned in the community and so on, it
12 wasn't.

13 We really tried to make it an on and off
14 switch. We didn't try to gradate how much risk. It
15 was either there was a likelihood that you were going
16 to get into serious trouble or, if it didn't rise to
17 that level, our group didn't concern. That doesn't
18 mean it wasn't a matter of concern, but it wasn't one
19 where you were looking at trying to get somebody out of
20 harm's way.

21 Q Sir, why didn't the group take action on

1 all the risks identified?

2 A Part of it is what can you do. If you have
3 a person who, let's say, in a normal or in a nice
4 democratic society where people don't kill you or put
5 you in jail because you say something politically
6 improper to them. They were going to suffer but what
7 can we do about it? There wasn't anyway to undo that
8 damage. It was done, they suffered it.

9 We can confined ourselves to things that
10 were both grave and we could actually do something
11 about in some cases. If you tried to deal with every
12 case where somebody was going to be embarrassed or
13 somebody was going to -- in some cases they were
14 seriously harmed in terms of losing their job, losing
15 their reputation in the community and so on, but
16 there's no way to rectify that.

17 So those cases were -- they were what they
18 were. But the ones that my group was focused on, what
19 we were tasked to do was to deal with the ones where
20 the consequences could be really grave and where we had
21 at least some steps we could take to mitigate the risk.

1 Q Sir, once a name was identified of a person
2 at risk that met all the criteria of the working group,
3 what happened next with that person's name?

4 A Well, we tracked all of them. But,
5 basically, what happened is that we could go back to
6 the post and say, okay, you should tell the person why
7 you think they're at risk.

8 In other words, a lot of these people, they
9 may have talked to us at a party and told us about some
10 activity that was going on or something. That doesn't
11 mean they know that ends up in a cable or purported
12 cable or not. So letting them know that your
13 conversation may have ended up in a purported cable was
14 one thing we could do, at least give them a heads-up
15 and alert that you've got a potential exposure here.

16 And then second was finding out if there
17 was something more we could do such as helping them
18 relocate or whatever it might be. But the initial step
19 was warning people and, as I said, we did that. The
20 guidance we put out was wherever it was feasible to do
21 that without increasing the risk to them because in

1 some cases us trying to reach out to somebody would
2 have furthered the idea or put them at risk because of
3 the monitoring of communications in the country
4 concerned...

5 Q Sir -- I'm sorry.

6 A That's it.

7 Q All right. Sir, for those that were
8 identified and that the embassies then further decided
9 would not put them at further risk, what happened once
10 that person was notified?

11 A So the embassy would reach out to them, say
12 here is the situation, talk to them about, you know,
13 how they felt about it or thought about it and in some
14 cases the person would say thank you very much, I'll,
15 you know, keep my antenna up, but I'm going to keep
16 doing my work and see what transpires.

17 In other cases, they said, oh, my gosh, the
18 local guys are going to get me or something and I need
19 to get out of here or I need to protect my family or
20 whatever it might be. In those cases, then, our people
21 were -- our embassy people were instructed to say,

1 well, what kind of help would be useful.

2 We had a little bit of a balancing act
3 because we didn't want to go out and start offering
4 particular kinds of help to people which they might or
5 might not need and it would look like we were enticing
6 them or something. On the other hand, we didn't want
7 to look like, well, we're just telling that you're in a
8 bad situation and that we're not going to do anything.

9 So we had our people be in a position where
10 they could say, you know, maybe we can do things to
11 help you, what do you need and so on but without making
12 any commitments at that point. They were under
13 instructions that they commit to any particular type of
14 activity.

15 But once they talked to the individual, then
16 they were charged -- the "they" being our embassy
17 personnel -- to design a proposed plan to help
18 mitigate, come back in and ask for approval from the
19 department which then our -- the group I chaired would
20 look at it, we agreed with the plan or we agreed with
21 it with some modifications. We would then recommend it

1 up the chain to under Secretary Kennedy who had the
2 final say on anything that involved -- made a
3 commitment to resources and everything. And then if he
4 approved -- what he was approving were cables going
5 back out to the field saying you're authorized to offer
6 the following forms of assistance to this person.

7 Q Sir, keeping this, of course, unclassified,
8 could you just describe kind of the buffet of
9 assistance that was available?

10 A Yeah. In some cases, it was helping people
11 relocate, where getting out of the immediate
12 environment was seen as a way of mitigating the risk to
13 them. So that was, I think, one of the primary ones
14 and really the largest one. But there were
15 sub-versions of that depending on where the people was
16 going and what kind of immigration status it might be,
17 you know, sometimes cooperation with other countries or
18 other international entities was required to make that
19 happen.

20 So the permutations of it were many, but
21 the basic thing was get the person out of harm's way

1 because since we had very little control over the
2 source of harm to them, the idea that we could dissuade
3 somebody. I think you can probably say if we went into
4 another government and said, oh, don't go so harsh on
5 this guy even though -- we'd just be calling more
6 attention to them. So we didn't do that. We stuck
7 with how do we help you disappear for a while or
8 permanently from the place where you are at risk.

9 Q So, sir, did that include moving people
10 within their own country, out of their own country
11 moving them across continents?

12 A All of the above.

13 Q Sir, without releasing any individual
14 details, can you just provide a brief example of a type
15 of person that would have -- that would have applied
16 to?

17 A Yeah, let me give you one which I think I
18 can generalize enough. I'm thinking of one very
19 specific case but there were some more like it. In
20 fact, in these cases the threat came not from a
21 government but from non-state actors. But the person

1 had said something and we -- and there was very genuine
2 concern that the next thing they were going to get was
3 killed by the non-state actors.

4 So we moved them out of -- I'm thinking of
5 two different cases in different continents right now
6 where that happened. In both cases, we moved the
7 individuals of the country they were in or helped them
8 move. The kind of aid would be helping people to get a
9 plane ticket, get a place to stay at the other end,
10 helping them regularize their immigration status, that
11 kind of thing.

12 Q Sir, in an unclassified and general manner,
13 how many persons -- how many persons has the department
14 identified as persons at risk? So approximately.

15 THE COURT: Yes?

16 MR. TOOMAN: Ma'am, I was just going to
17 interject I think that might call for a classified
18 answer.

19 BY MR. FEIN:

20 Q Sir, can you answer that in general,
21 unclassified? If you can't, sir, then don't.

1 A I think it would probably be better to do
2 that in a classified environment if that's possible.

3 Q Thank you.

4 Sir, are these individuals American
5 citizens or foreign persons?

6 A In the cases we had, I think they were
7 almost all, if not all, foreign citizens because
8 Americans have the option to relocate anyway. They
9 don't need a lot of help. They can get a ticket and
10 come back here. They don't need help with immigration
11 issues or anything.

12 I'm trying to remember -- actually, I did
13 have at least one that was an American citizen and the
14 issue was plane fare and it actually involved some
15 employment considerations as well.

16 So, yeah, I had forgotten for a moment that
17 one case. It was a dual national but was primarily
18 American.

19 Q Yes.

20 A But I think that's the only one I can
21 recall that had any American --

1 Q Sir, for these individuals, what role do
2 they play in foreign diplomacy and foreign relations?

3 A Well, largely as sources of information and
4 understanding as to what is going on and I don't
5 want -- I want to be careful not to compound the idea
6 that they're somehow spies or something like that.

7 I mean, diplomats, part of our job is, when
8 we're in another society, you talk to a lot of people.
9 Your job is try to figure out what's going on and how
10 to influence it in directions that suit the United
11 States.

12 So the category of trying to figure out
13 what's going on, you're talking to people in all walks
14 of life. You're talking to officials in the government
15 sometimes because you're under instructions to go ahead
16 and talk to them, sometimes because they ask you to
17 come talk to them. But, also, you develop
18 relationships with them so they can give you an
19 understanding on what is going on in their own
20 government, that, yes, the president really does favor
21 this, but he's being pushed by some wing of his own

1 party and that's why he hasn't done it yet.

2 Those are useful bits of information to
3 know, but it also goes to you talk to local journalists
4 who can give you insight into what's going on in the
5 country. Again, they're not passing you government
6 secrets or something. They're telling you, from their
7 work, what they understand. You talk to religious
8 leaders, you talk to political party people, you talk
9 to people in the street.

10 One of my sources of information when I was
11 Havana, I'm a car mechanic by trade. I would go out
12 and see some guy with a hood up and start talking to
13 him and pretty soon he was telling me all about what
14 was going on in his neighborhood.

15 Again, he's not giving me any secrets. He
16 knew who I was. He was chatting me up. Whether that
17 ended up in a cable and whether it ended up in a form
18 where you could identify the person, he wasn't going to
19 know that. But what we were getting was valuable just
20 in terms of, you know, is the economy improving or not
21 is it getting worse. Is there a shortage of medicine,

1 is there a shortage of food or something. You can get
2 a lot of information just by talking to normal people
3 at the grocery store and on the street. So it just
4 really goes across the board. That's our job is to try
5 to find out how other countries work.

6 Q Sir, is the department still notifying
7 persons at risk?

8 A Notifying -- yes. If it was somebody that
9 we weren't able to get to and they come into a place
10 where we can get to them, we have mechanisms in place
11 that alert us so we can give them a notification.

12 Q And is the department still providing
13 assistance to persons at risk?

14 A Yes.

15 Q Why is that, sir?

16 A In some cases because of recent activities
17 involving --

18 THE COURT: Let him answer the question and
19 I'll see. Go ahead.

20 THE WITNESS: Maybe we're getting into an
21 area --

1 THE COURT: You think that's classified
2 information or --

3 MR. TOOMAN: I was objecting, Your Honor.
4 We think those were hearsay sort of the basis for the
5 opinion and also --

6 THE COURT: What's hearsay?

7 MR. TOOMAN: The people coming and saying
8 help us, I believe is what he said. Additionally, we
9 would insert our before objection as to directly
10 relating to three years after the fact.

11 THE COURT: Well, these -- the people
12 you're testifying to are all the ones that you
13 identified from the release cables?

14 THE WITNESS: Correct.

15 THE COURT: That's overruled.

16 THE WITNESS: What I was saying --

17 THE COURT: Hold on a moment. Hearsay
18 objection? What is your position?

19 MR. FEIN: Your Honor, I don't understand
20 which part of what said was hearsay.

21 THE COURT: Which particular piece are you

1 talking about?

2 MR. TOOMAN: I believe individuals came and
3 said something to the Department of State. I could
4 have misunderstood the question.

5 MR. FEIN: Your Honor, I'll rephrase the
6 question just for clarification.

7 THE COURT: Why don't you go ahead and do
8 that?

9 MR. FEIN: Yes, ma'am. Sir, one moment,
10 please.

11 BY MR. FEIN:

12 Q Sir, the question I had originally asked
13 was -- and we'll take it one step at a time. Is the
14 department still providing assistance to persons at
15 risk today?

16 A Yes.

17 Q And how is the department providing
18 assistance today to persons at risk from the cables
19 released by -- the purported cable release by
20 WikiLeaks?

21 A Some people have not been able to

1 regularize their status in the places that they're in
2 and we have to find ways to help them in that respect.

3 Q And how recent, sir, has it been since they
4 have provided assistance to individuals that were
5 identified from the purported cable of PFC Manning has
6 been charged with and convicted?

7 A I got one that -- actually, I got two in
8 the last two weeks where -- let me be clear -- where
9 additional or new assistance has been requested and
10 we're working it. It hasn't been provided yet.

11 Q Thank you, sir.

12 THE COURT: Let me interrupt you there and
13 ask a question. Is this people who were identified a
14 long time ago who still need -- the assistance began a
15 long time ago or is this new people that just came out?

16 THE WITNESS: I'm trying to think of how to
17 do this without going classified. One case is
18 certainly one who was identified at the beginning. The
19 other was one where the post thought they had been
20 identified at the beginning, but they weren't and then
21 they got into a jam. So it's -- I guess the answer is

1 they should have been but the assessment maybe wasn't
2 made correctly at the beginning but the danger turned
3 out to be there and real.

4 BY MR. FEIN:

5 Q Sir, one moment please.

6 (Pause.)

7 Sir, based on your experience and
8 expertise, what has been the greatest damage to
9 national security that's been caused by PFC Manning's
10 crimes to democracy and human rights efforts with the
11 Department of State?

12 THE COURT: Wait a minute. That's a way
13 broad question. Say that again.

14 MR. FEIN: Yes, Your Honor.

15 Based on his experience and expertise,
16 ma'am, what has been the greatest damage caused by PFC
17 Manning's crimes of democracy and human rights -- the
18 greatest damage to democracy and human rights within
19 the state?

20 THE COURT: I see the Defense's objection
21 and in my interlocutory capacity and I'll listen to the

1 answer and decide. Go ahead.

2 THE WITNESS: I'm confining this to the
3 democracy and human rights area because I won't
4 speculate on others. But I would say that the greatest
5 damage is that for people coming in and talking to us
6 and trying to work with us to promote the advance of
7 human rights and democracy in their own countries, that
8 it's created a chilling effect on people. They can't
9 be sure now whether what they say is going to stay
10 confidential or whether it's going to get broadcast
11 around.

12 It's meant that some people, some activists
13 in a democracy and human rights field, because of the
14 damage that occurred in the first place, are no longer
15 able to be active. So that's had an obvious effect on
16 those particular countries where those individuals came
17 from, that you just lost some leaders in that field.

18 But it's -- to me, the longer term effect
19 is that credibility effect that people -- if people
20 feel that by talking to you and working with you that
21 they're going to end up being put at greater risk, they

1 are going to be more reluctant to do that and it's hard
2 to measure the degree of that. But it's clearly --
3 it's something that activists have mentioned when they
4 see me. They are nervous about it.

5 Q Sir, do you believe that the United States
6 will be able to -- specifically, the Department of
7 State, will be able to assist all the individuals that
8 are identified at risk?

9 A No. As we mentioned, without going into
10 numbers, we had that caveat that if we could not safely
11 reach out to somebody, we didn't do it.

12 So we weren't able to notify everybody and
13 I don't want to go much further than that because we'll
14 start to get down into...

15 Q One moment, please.

16 (Pause.)

17 Sir, in your 41 plus years with the
18 Department of State, have you had other events or
19 crises that have required assistance to individuals,
20 non-U.S. personnel?

21 A Others, yes. I mean, I mentioned we

1 have --

2 MR. TOOMAN: Objection, Your Honor.

3 THE COURT: Major Fein, where are we going
4 with this?

5 MR. FEIN: Your Honor, the next question
6 was going to be has there ever been an event that
7 caused this much resources and expenditures that the
8 department has had to do based off what PFC Manning
9 did.

10 THE COURT: That question I will allow.
11 But are you going broader than that?

12 THE COURT: No ma'am. That's fine.

13 BY MR. FEIN:

14 Q Sir, I'm going rephrase that question.

15 Sir, in reference to the WikiLeaks
16 disclosures, in your 41-plus years, has the department
17 had to create a working group like it did and follow
18 individuals at risk ever?

19 A No, certainly not individuals at risk
20 because of something that the U.S. did. The other
21 experiences that I've had, as I mentioned before, are

1 ones where we were trying to help people that were
2 being persecuted by their own governments for their own
3 reasons. I can't recall another case where something
4 we did or were allegedly involved in created that
5 situation and then we had to react to it.

6 MR. FEIN: Thank you, sir.

7 Your Honor, no further questions.

8 THE COURT: Let me just clarify your
9 opinion before we get to your statement there.

10 So is it your testimony the United States
11 has never done anything to put someone at a lot of
12 risk?

13 THE WITNESS: No, that we have not had to
14 create a task force to deal with that before, ma'am.

15 THE COURT: Go ahead.

16 EXAMINATION BY MR. TOOMAN:

17 Q Good afternoon, Ambassador Kozak.

18 A Good afternoon.

19 Q I'm sure, Ambassador, you've been at the
20 State Department for a few years?

21 A Yes.

1 Q In those few years you have probably
2 written a cable or two?

3 A Yes, sir.

4 Q And when you wrote those cables, there were
5 times when you would have put individuals' names in
6 those cables?

7 A Yes.

8 Q And when you put a person's name in a
9 cable, you consider that when you're determining how
10 you should mark it as far as classification goes?

11 A Yes.

12 Q And when you do that, do you consider the
13 effect on that person if the cable were released when
14 you're making your classification decision?

15 A Yes.

16 Q Now, with the purported cables in this
17 case, some of those cables were unclassified, right?

18 A Yes.

19 Q And some of them were confidential?

20 A Yes.

21 Q Some of them were secret?

1 A Yes.

2 Q Were there -- to your memory, were there
3 any names in the unclassified purported cables?

4 A Yes.

5 Q And --

6 A Now, I'll go ahead and expand on it.

7 Q Please.

8 A Now, I can't claim to have read all quarter
9 of a million cables myself, but I know one of the
10 things that I did look at, a lot of the unclassified
11 cables or admin channel cables. So it will be
12 something like I'm traveling to Geneva next week,
13 here's my Visa card number, here's my social security
14 number and all of that for clearances and here is the
15 fund site.

16 So there you would have a name, but it's
17 not where you're sourcing somebody. A lot of that
18 unclassified was that type of traffic.

19 Q Okay. Now, none of the purported cables
20 were classified as top secret, correct?

21 A Not to my knowledge.

1 Q I'd like to talk a little bit about the
2 process that you all went through in the persons at
3 risk.

4 A Yes.

5 Q Now, initially, the -- I guess the task
6 force that was set up for WikiLeaks had -- was going
7 through the purported cables. At first, the reaction
8 was this is going to be embarrassing, right?

9 A Embarrassing to our foreign relations, yes.

10 Q And then you as you guys got a further in,
11 you realized that there might be some risk to people?

12 A Yes. I think I said that that was my
13 perception. I wasn't there when they first created the
14 group. So my sense was that they were first worried
15 about these broader implications and then immediately
16 they started to see the narrower problem that I got
17 tasked with.

18 Q So when it came to the attention of the
19 people working in that group that maybe some people
20 might be at risk, then your group was set up?

21 A Correct.

1 Q And you weren't in a position to make
2 determinations whether or not individual people were at
3 risk, were you, you personally?

4 A Not -- certainly not in most cases.

5 Q And part of that was because you and your
6 group couldn't go through all the cables? That was one
7 factor?

8 A One factor, yes.

9 Q And I guess another factor would have been
10 the people kind of on the ground in the embassies were
11 in a better position to determine, based on the
12 dynamics in a particular country, who was at risk and
13 who wasn't?

14 A Correct.

15 Q And so that kind of got farmed out to the
16 individual embassies?

17 A Yes.

18 Q You go through your cables, got them,
19 embassy, and you figure out your people, right?

20 A Right. We set the policy, what were the
21 criteria, what kind of assistance would we be willing

1 to provide. But the judgments as to who fit that
2 standard were made largely by the people on the ground.

3 Q Right, and those people on the ground, you
4 trusted their judgment because they are the ones who
5 are in that environment?

6 A Yes, and we also -- one of our instructions
7 was that those judgments had to be made by the chief of
8 mission. So it wasn't just the musings of a junior
9 officer who wanted to be sure that we really had the
10 best thinking and the most authority thinking from our
11 posts abroad.

12 Q And, generally speaking, these people were
13 already in environments that carried with them some
14 degree of danger, correct?

15 A As a general rule, that's correct. Correct
16 in the sense that the places you're worried about are
17 countries with arbitrary, capricious governments that
18 don't follow rule of law. Not entirely, but mostly.

19 Q Right. And I think an example we could
20 easily talk about is the United States. If a person
21 was in the United States, we wouldn't be worried about

1 it because we're not in the business of violating human
2 rights and doing those sorts of things?

3 A Correct, with the exception of if the
4 concern was that the person provoked by the alleged
5 cable would be a non-state actor or something, then the
6 nature of the government wasn't as much of a factor.

7 Q Sure. So you would be focused on places
8 where there were non-state actors who may react
9 violently to things or even where a government might
10 react violently?

11 A Both.

12 Q Or irrationally?

13 A Both.

14 Q Now, when this group was set up, you all
15 had a surge, basically, in the amount of work when the
16 purported cables were actually released, right?

17 A You mean when the entire lot was...

18 Q Yes, sir. When the entire purported group
19 of the purported cables came out, then things got
20 really busy for you?

21 A Yeah. Well, there were a lot that came out

1 before that.

2 Q Right.

3 A But we -- maybe I should clarify here. We
4 operated on the assumption from the beginning that once
5 WikiLeaks had put the lot of the whole file out to
6 different news media organizations and everything,
7 first, that any major intelligence service worth itself
8 was going to figure out a way to get their hands on it
9 and, second, that there was a strong likelihood that
10 eventually those cables would get out.

11 So when we asked people to make -- asked
12 our post to make these judgments, it wasn't based on
13 which things had what appeared in the newspapers. It
14 was on the assumption that this will come to the
15 attention of local authorities or non-state actors, you
16 know, is there a likelihood that the people are going
17 to get into a problem, into a serious problem.

18 So, yes, we had more of a surge as things
19 got published that, I guess, concentrated the mind of
20 the people who are at risk. But the judgments we were
21 making was not dependent on the -- whether something

1 had been published or not at that point.

2 Q Right. So in the late 2010, early 2011
3 timeframe you all were meeting -- you would have a
4 meeting daily?

5 A Yes.

6 Q And then after a few months of that you
7 went to a weekly meeting?

8 A Correct.

9 Q And then after you all did that for a
10 little while, eventually you just did, like, a VTC sort
11 of thing or you'd correspond over E-mail?

12 A Yes, largely correspond on E-mail because
13 both -- once we sat together and we worked out the
14 standard operating procedures and the criteria, the
15 idea was to be sure we were being consistent across
16 regions, once we got that drilled down pretty well.

17 Nowadays, if we've got something, we tend
18 to deal with the particular regional that is involved
19 and we copy the other one so if they think that
20 something going off kilter they can speak up. But
21 we're not asking everybody to clear off on everything

1 like we were in the beginning.

2 Q And now it's pretty much you hit the target
3 when it pops up, right? If something comes up, then
4 you deal with it?

5 A Correct.

6 Q And, at this point, pretty much what you
7 all are doing is you're following up with things to
8 regularize a person's status in a particular place?

9 A Well --

10 Q That would be the bulk of what you all are
11 doing at this point?

12 A That's certainly one of them, but.

13 THE COURT: I don't think I understand that
14 question. Regularize?

15 Q I believe those were the words that
16 ambassador Kozak used on direct. Regular -- I have a
17 hard time saying it. Regularize a person's status in a
18 particular place wherever they are. Their immigration
19 status or...

20 A That's what I had in mind, Your Honor.

21 MR. TOOMAN: I have no further questions,

1 Ambassador. Thank you.

2 THE COURT: Any redirect?

3 MR. FEIN: Can I have a moment, Your Honor?

4 THE COURT: Yes.

5 (Pause.)

6 THE COURT: That's all right. If you want
7 a recess, I'll give it to you.

8 MR. FEIN: No, ma'am.

9 EXAMINATION BY MR. FEIN:

10 Q Just now when the defense asked you a
11 question about all of your -- I think it was all you're
12 doing today is regularize -- I can't even say the word
13 either -- the R word with the rest of the procedures
14 you seem to have something else to say.

15 What else is the working group doing today?

16 A Well, I think I mentioned we've had another
17 instance in which somebody who should have been
18 classified originally wasn't and we're trying to deal
19 with that and that's not a case of regularizing status
20 or doing follow up on something. So that's why I said,
21 generally, yes, but there's all kinds of work that's

1 still involved. It's just that it's much less of it
2 now than there was in those first days when it was very
3 intense and people were being notified for the first
4 time.

5 Q Sir, today, when do you estimate that the
6 group will be complete with their mission?

7 A I can't estimate a time when that would
8 occur. I think we figured out a way not to use up
9 people's time. As we talked with the defense earlier,
10 we don't have meetings for the sake of having meetings.
11 That's why we've gone to this other mode, but there is
12 no cutoff to this.

13 If somebody is in a bad situation we made
14 them in a safer situation, but they're still not in a
15 sustainable place. We've still got a concern about it.
16 There may or may not be something we can do about that,
17 but we don't want to just say there's a cut-off date
18 and if you didn't suffer consequences before this time
19 you're out of luck.

20 The other thing I would say that's involved
21 in this too is while WikiLeaks dumped the entire lot of

1 cables -- I think it was sometime in 2011 -- purported
2 cables, indeed, out on the Internet at one point, the
3 reaction to that by various bad guys around the world,
4 they may not be sitting there sifting through cables on
5 the Internet. They wait until something comes out in
6 the newspapers or something and that triggers another
7 eruption.

8 As you may have seen, around the world, the
9 way news services are tending to use this stuff is they
10 didn't just say, okay, all of this stuff came out and
11 that's it. It's when they have a story about a
12 particular politician or policy issue or something
13 that's going -- and the U.S. media does this too.
14 They'll go find material from WikiLeaks and use it in
15 the story.

16 So every time that happens, there's a
17 little bit of an uptick. Hopefully, it's a case where
18 we predicted that the person would be at risk and did
19 something. But sometimes the person chose not to act
20 then, but once it becomes a problem then -- or it
21 becomes more publicized, then they get more concerned.

1 So that's why you can't -- you really can't
2 see when this would come to an absolute firm halt.
3 It's -- the amount of work has certainly diminished
4 substantially, but you can't predict some event that's
5 going to cut off -- after that, everybody will be safe
6 and there will never be a problem again.

7 Q Sir, I asked you to clarify this on direct
8 and then the same term came up on cross. It's the term
9 "embarrassing."

10 What do you mean, sir, when you say that
11 the information contained within it could be
12 embarrassing?

13 A Yeah. It may be I'm using a diplomatic
14 term when you say something that embarrasses your
15 foreign relations or something. That's not a good
16 thing. It's not just, like, oh, gee, I said something
17 not so nice or something. It's where it really puts
18 them in a problem.

19 If you see that the assistant secretary for
20 some region has insulted or given a very low opinion of
21 a foreign minister in another country or something,

1 that can cause that other country to react badly across
2 a whole range of activity. They may cancel meetings.
3 They may not go through with a treaty. They may not
4 allow us to do -- I mean, you can think all of the
5 types of interactions the U.S. has in its relationships
6 with other country.

7 If somebody gets mad enough about it that
8 they start not being cooperative and throw up all kinds
9 of obstacles. It's that kind of embarrassment I'm
10 talking about, not just sort of a personal
11 embarrassment. That wasn't the main concern. It was
12 are we going -- so upset, some of the major players
13 around the world, that we're going to have a really
14 hard time -- I mean, foreign relations are hit broadly
15 because a lot of times it's activities that affect
16 other agencies, not just the State Department, the
17 defense department in particular.

18 Q So, sir, why is that type of information
19 that you said, the diplomatic term of embarrassment, why
20 is that type of information included in the cables on
21 SIPRNET?

1 A Well, first, you're trying to be sure. The
2 reason we do cables at all is you want the people back
3 home to know what's going on, both -- some of it is
4 very operational, you know. I want you to send a note
5 tomorrow to ask them to do this. But some of it is
6 analytical, what's really going on here, what are the
7 chances -- you know, is this country going to be a good
8 partner with us on something or not? Are they going to
9 democratize? What's the wedge on that? And the reason
10 you would put that in there is that you're trying to
11 give the analysts, whether they're formal analysts or
12 a user like me at the other end, a sense of is this
13 information credible, is it coming from somebody who is
14 really likely to know who's got good judgment and so on
15 or is it coming from just no one or is it just the
16 opinion of the ambassador with no backup to it. So
17 that's why you put it in there. You're trying to give
18 flavor.

19 The part that isn't so -- certainly not
20 embarrassing if it were to leak to the person in the
21 meeting is to say, you know, we had the meeting and he

1 said this and I said that and she said this and I said
2 there. Okay, they were there, they knew you said that.
3 But you might be talking to an interlocutory in one
4 government, but if that gets leaked out to another
5 government, they're going to say, oh, you were talking
6 about us or you were conspiring with them or whatever,
7 you know, view they might have.

8 The stuff that is more -- this person told
9 me in confidence that the reason the minister isn't
10 able to agree to this is that he's getting chopped up
11 internally by the president's son-in-law or something
12 who's got business relations with somebody else. That
13 gives you a big understanding of what you're dealing
14 with and you learn, okay, making more arguments to the
15 minister is probably not going to change the equation,
16 that we're going to have to go to the president or
17 something to do that.

18 So that's the reason you want that
19 information, but you don't want it spread all over the
20 place. You're using it so you can make your
21 calculations on how you can best advance U.S. goals.

1 MR. FEIN: Thank you, sir.

2 THE COURT: Defense, any last questions?

3 MR. TOOMAN: No, ma'am.

4 THE COURT: I have a few.

5 Do you know how far the cables,
6 250,000-plus cables went back?

7 THE WITNESS: Yes, ma'am. The reason it's
8 hard to say, I believe that database was inaugurated in
9 2005. I know this because I went back to look for some
10 of my own cables to see if I put any in and what
11 happened was, from that time on -- this was sort of
12 a -- going into that database was a fairly normal
13 function. You had to say you wouldn't put it in there.
14 But some bureaus -- and I don't know what drove this --
15 went back and took cables that were from much, much
16 earlier, some of them going back 20 and 30 years and
17 stuck them into that database.

18 In fact, I found some of my old cables
19 back -- happily, they were about events that were
20 fairly public at the time. They didn't put anybody in
21 jeopardy, the particular ones I had.

1 So I think the oldest ones went back even
2 to the '60s and the -- but the bulk of them where they
3 were sort of automatically put in the database was from
4 2005, I believe, on up.

5 THE COURT: So -- and if you can't answer
6 this in an open session, just tell me that.

7 The majority of the people that your group
8 assisted, would they have come from the recent cables
9 or would they have gone all the way back to the '60s?

10 THE WITNESS: Recent.

11 THE COURT: You gave an opinion in response
12 to the trial counsel's question -- this is another one,
13 if you can't answer this in an open setting, just let
14 me know -- that the greatest damage to democracy and
15 human rights was people coming in and talking to
16 Department of State, it was creating a chilling effect
17 on people, they were afraid to come forward.

18 How do you know that?

19 THE WITNESS: Talking to activists in other
20 countries. You know, what I would have to say is I
21 can't say that somebody didn't come forward because

1 that -- because I wouldn't know that they didn't. But
2 I did have individuals who had been contacts for us
3 over the years say are you sure that you can keep this
4 from being published and giving their opinion that it
5 was -- it made it harder for people, it made it harder
6 for them to work with colleagues and so on because they
7 were afraid that they would somehow end up being
8 revealed in some way that they wouldn't want to be.
9 But, you know, it's not the kind of thing where I can
10 put a precise measure on it. It's a tendency rather
11 than a measurable quantity.

12 THE COURT: The people that you are still
13 helping or you're helping, did I understand your
14 testimony correctly that they're either people that
15 should have been notified before but somehow slipped
16 through the cracks and you didn't catch it or
17 they're -- you're continuing to help people who you
18 helped before and just need further help?

19 THE WITNESS: Almost all of the latter. I
20 had one case of the former.

21 THE COURT: And you also testified that the

1 leaks would come out and that may not have been what
2 really put the attention on it for a particular issue.
3 It might be the subsequent publication. So is that
4 creating new people coming out or is that you're
5 still -- that was always -- you're assisting the older
6 people?

7 THE WITNESS: If we did our job correctly
8 and I think in all but the one case I mentioned we did,
9 we had identified those people earlier as being at
10 risk. But their own perception and the amount of heat
11 coming down on them may have been more dependent on
12 when the thing actually got published in their local.
13 It's what brings it to the attention of the person
14 who's going to cause harm to them, basically.

15 If the person was busy throwing the
16 WikiLeaks database, they may have done that earlier.
17 If they were waiting for it to come up in a news
18 article as part of the story or something, that may
19 have been later.

20 THE COURT: Are you still seeing that,
21 newspaper stories coming out and people saying I should

1 have asked for assistance, I need it now?

2 THE WITNESS: I've got one case in mind,
3 but if I tell you much about it, it will...

4 THE COURT: Got it. Well, I won't ask
5 that.

6 Any followup based on mine in open session?

7 MR. FEIN: No, ma'am.

8 MR. TOOMAN: No, Your Honor.

9 THE COURT: All right. Will we need to
10 proceed to --

11 MR. FEIN: United States would like to
12 proceed to a closed session, ma'am, to just ask
13 questions that we were going to ask before but couldn't
14 get answers.

15 THE COURT: All right. How long do we
16 need?

17 MR. FEIN: We should need approximately 20
18 minutes, ma'am. But if -- just approximately 20
19 minutes to close the session if you want to talk about
20 Monday morning.

21 THE COURT: That's what I'm looking at. Do

1 you see any need for additional open session today?

2 MR. COOMBS: No, Your Honor.

3 MR. TOOMAN: No, ma'am.

4 THE COURT: Okay. What time do you want to
5 start on Monday morning?

6 MR. FEIN: May I have a moment?

7 THE COURT: Yes.

8 MR. COOMBS: The Defense has asked for
9 general topic areas under Secretary Kennedy. The
10 government has indicated that they are going to try to
11 give us that by Sunday. But if we know what the
12 general topic areas are -- it's all supposed to be
13 open, not a closed session -- then that will determine
14 how much time we might need in the morning. So without
15 those, I would say, cautiously, given the fact that
16 he's supposed to testify an entire day we should start
17 at 10:00.

18 THE COURT: Is that going to give you
19 enough time? That's my concern.

20 MR. COOMBS: Well, he's arriving at 8:00 in
21 the morning. I think 8:00 to 10:00 should be

1 sufficient. If the topics -- once I get topics from
2 the government, if they're much more expansive than
3 what I anticipate based upon our previous conversation
4 with him and that fact that it's only going to be open,
5 then I can alert the court in the morning.

6 THE COURT: Well, the other option would be
7 if we start at 10:00 and you get a span of topics is go
8 through some of the topics starting at 10:00 in the
9 morning, take the longer period -- the lunch period
10 wherever that may be -- and then you go sort of into a
11 phase two. Would that be something that would work?

12 MR. COOMBS: That would work fine too, Your
13 Honor.

14 MR. FEIN: The United States doesn't expect
15 we need more time because we'll get very precise
16 topics.

17 THE COURT: So 10:00 the parties agree to?

18 MR. FEIN: Yes, Your Honor.

19 MR. COOMBS: Yes, ma'am.

20 THE COURT: All right. Members of the
21 public, we're going to go into a brief closed session.

1 That's going to be it for the open sessions today.
2 We'll be resuming at 10:00 on Monday morning. Court is
3 in recess.

4 (The trial was adjourned at 3:05 p.m.)
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